1IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 19628 of 2004

Between:

M/s. Bung Agencies, A Proprietary Concern Rep. by its Proprietor Sri Mukundas Bung, S/o. Late Sri. Srivallabh Bung, Aged 55 Years, Occ: Business, R/o. 15-2-673/C,
Kishangunj, Hyderabad.

..... PETITIONER

And

1 The A.P. Co-operative Tribunal, Rep. by its Secretary,
VII th Floor, Gagan Vihar, Hyderabad.
2 The A.P. Mahajan Co-operative Urban Bank Limited, Rep.

by its Chief Executive Officer, 1st Floor, Ghasmandi
Road, Secunderabad.
3 The Co-operative Sub-Registrar/Sale Officer Office of the

Divisional Co-operative Officer, Secunderabad Division,

A.P.H.B., Complex, Nampally, Hyderabad.
4 Hyderabad Agricultural Co-operative Association Limited,

Rep. by its Managing Director, Having its Office at
5-10-193, IIn Floor, HACA Bhavan, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to pass an order, direction or writ more in the nature of Certiorari by declaring the action of the 1st respondent in dismissing I.A.No.1332/2004 in C.T.A.No.332/2003 by orders dated 20-10-2004 as being arbitrary, illegal and against the principles of natural justice and fair play and consequently grant stay of all further proceedings in

pursuance of the award in A.R.C.No.232/2002/J1 dated 31-3-2003 including auction proceedings pending disposal of CTA 332/03.

Counsel for the Petitioner: MR.A.P.VENUGOPAL

Counsel for the Respondent Nos.1 to 4: GP FOR COOPERATION

The Court made the following :

ORDER:

Heard the learned counsel for the petitioner Mr. A.P.Venu Gopal and the learned standing counsel Mr S.Sainathan for the 2nd respondent-Bank.

This writ petition is filed, aggrieved by the order passed by the AP Co-operative Tribunal, Hyderabad in I.A.No.1332 of 2004 in CTA No.332 of 2003 dated 20-10-2004.

It is not in dispute that the second respondent Bank initiated proceedings under Section 62 of the A.P. Co-operative Societies Act, 1964 for recovery of Rs.6,98,954-20 ps and in pursuance of the same an award was passed by the third respondent herein in A.R.C.No.232 of 2002/J1 dated 31-03-2003 making the writ petitioner and the fourth respondent herein along with four others jointly and severally liable. Aggrieved by the same, the petitioner herein preferred an Appeal (C.T.A.No.332 of 2003) in the said Co-operative Tribunal, Hyderabad, which is pending.

It is also not in dispute that initially the petitioner filed I.A.No.5808 of 2003 seeking stay of all further proceedings in pursuance of the Award dated 31-03-2003, but the same was dismissed on 16-08-2003 by the Tribunal. It appears that aggrieved by the said order, the petitioner filed W.P.No.18515 of 2003 in which interim stay was granted subject to the petitioner deposits a sum of Rs.2.5 lakhs, but the petitioner failed to comply with the same and ultimately the writ petition was dismissed as withdrawn. In the meantime, the petitioner filed O.S.No.21 of 2003 on the file of the Court of the III-Additional Chief Judge, City Civil Court, Hyderabad against the fourth respondent herein for recovery of Rs.10,57,650/- alleged to be due with regard to certain business transactions carried on by the petitioner and the fourth respondent. The said suit was decreed on 27-10-2003 and in pursuance thereof the petitioner filed E.P.No.13 of 2004 seeking attachment of the Bank account of the fourth respondent and the same was ordered. Aggrieved by the said

order passed by the Court of III-Additional Chief Judge, City Civil Court, Hyderabad, the fourth respondent herein filed C.R.P.No.2180 of 2004. This Court by order dated 30-04-2004 in C.M.P.No.9909 of 2004 granted stay subject to the condition that the fourth respondent deposits 1/4th of the decretal amount. In compliance with the same, the fourth respondent deposited a sum of Rs.3 lakhs in the Court of III-Additional Chief Judge, City Civil Court, Hyderbad. It appears that the petitioner has filed an application for withdrawal of the said amounts which is pending for consideration. While so, the second respondent filed E.P.No.238 of 2003/J1(A) before the third respondent for execution of the Award dated 31-03-2003 and in pursuance thereof, a notification was issued in the local dailies for sale of the mortgaged property belonging to the petitioner. The sale is proposed to be held on 28-10-2004. The petitioner states that the property proposed to be sold is a residential house in which the deponent is staying along with other family members.

In the changed set of circumstances, the petitioner preferred IA No.1332 of 2004 in CTA No.332 of 2003 requesting the 1st respondent Tribunal to grant stay of the execution proceedings. The said application was dismissed by the Tribunal by order dated 20-10-2004 on the ground that the petitioner failed to comply with the directions of this Court for depositing 50% of the amount and also since the earlier application filed by the petitioner for the same relief was already dismissed. Challenging the said order, the present writ petition is filed.

The learned counsel for the petitioner submits that the petitioner is prepared to pay a sum of Rs1,50,000/- immediately and the necessary steps are also being taken for withdrawal of Rs.3 lakhs in deposit in the Court of III-Additional Chief Judge, City Civil Court, Hyderabad and if reasonable time is granted, the same will also be paid and therefore it would be appropriate to stay the proposed sale of the residential house till the disposal of the Appeal pending in the Tribunal.

The learned Counsel appearing for the second respondent Bank submitted that there cannot be any stay of proposed sale unless the petitioner deposits atleast half of the amount in dispute in compliance with the earlier orders of this Court. The learned Counsel also made a request for necessary directions for expeditious disposal of the Appeal pending before the Tribunal.

Having regard to the facts and circumstances of the case and in the light of the submissions made by the learned Counsel for both parties, the writ petition is

disposed of with a direction to the Tribunal to dispose of the appeal pending on its file, as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of this Order. Pending the said appeal, the proceedings in EP.No.238/2003-J1 (A) shall be stayed subject to the condition that the petitioner deposits a sum of Rs.5,00,000/- (Rupees five lakhs) towards the amount due under the Award dated 31-03-2003. Out of the said amount, a sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) has been paid by way of demand draft today which has been handed over by the learned Counsel for the petitioner to Sri D.V.Krishna Rao, the Chief Executive Officer of the 2nd respondent Bank, who is present in the Court and has been identified by the learned Counsel for the second respondent Bank. The balance of Rs.3.5 lakhs shall be deposited in the Tribunal below within a period of four weeks from today failing which the stay stands vacated.

The writ petition is accordingly disposed of. No costs.

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26-10-2004

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Note:

Issue CC by Two days

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To

1 The Secretary,A.P. Co-operative Tribunal,
VII th Floor, Gagan Vihar, Hyderabad.
2 The Chief Executive Officer,A.P. Mahajan Co-operative Urban

Bank Limited, 1st Floor, Ghasmandi Road, Secunderabad.
3 The Co-operative Sub-Registrar/Sale Officer Office of the

Divisional Co-operative Officer, Secunderabad Division,

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5 Two CD copies.